

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

FILED

NOV 14 2017

Clerk, U.S. District Court
District Of Montana
Great Falls

MAURICE R. ARCHER, JOHN W.
CHAMBERS, CHARLES CLARY,
KEITH E. DOYLE, and BRIAN D.
SMITH,

Plaintiffs,

v.

TIMOTHY FOX, ATTORNEY
GENERAL, STATE OF MONTANA;
HON. MIKE MCGRATH, CHIEF
JUSTICE, THE SUPREME COURT,
STATE OF MONTANA, et. al.,

Defendants.

CV-17-108-GF-BMM-JTJ

**ORDER ADOPTING MAGISTRATE
JUDGE'S FINDINGS AND
RECOMMENDATIONS**

Plaintiffs Maurice Archer ("Archer"), John Chambers, Charles Clary, Keith Doyle, and Brian Smith (collectively "Plaintiffs") filed motions to proceed in former pauperis (Docs. 1-5), a motion for class certification (Doc. 7), and a motion for appointment of counsel (Doc. 9). United States Magistrate Judge John Johnston issued an Order and Findings and Recommendations in this matter on October 18, 2017. (Doc. 10.) Judge Johnston ordered that Plaintiffs' claims be severed, and that the motion for appointment of counsel be denied. (Doc. 10 at 10-11.) Judge Johnston further recommended that the Court deny Plaintiffs' motion for class

certification. (Doc. 10 at 11.) Judge Johnston separately granted Plaintiffs' motions to proceed in forma pauperis on October 23, 2017. (*See* Doc. 12.)

Archer filed an objection on November 6, 2017. (Doc. 14.) Archer objected to Judge Johnston's order of severance and resultant "recharacterization" of the complaint from a class action to five individual cases. (Doc. 14 at 10.) Archer's objection further contained substantial reargument of the Complaint's arguments regarding the Fourteenth Amendment. (Doc. 14 at 8-9.)

I. LEGAL STANDARD

The Court reviews *de novo* findings and recommendations to which objections are made. 28 U.S.C. § 636(b)(1)(C). Portions of findings and recommendations to which no party specifically objects are reviewed for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Where a party's objections, however, constitute perfunctory responses argued in an attempt to engage the district court in a relitigation of the same arguments set forth in the original response, the Court will review for clear error the applicable portions of the findings and recommendations. *Rosling v. Kirkegard*, 2014 WL 693315 *3 (D. Mont. Feb. 21, 2014) (internal citations omitted).

Archer's objections generally refer to both Judge Johnston's severance order and his recommendation to deny class action certification. (Doc. 14 at 4.) The

Court acknowledges that the issues are closely related, and notes Archer's *pro se* status. The Court must "liberally construe" *pro se* filings. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Therefore, the Court construes Archer's objections liberally as objections to Judge Johnston's class action recommendation, and reviews de novo the recommendation to deny class certification.

To the extent that Archer objects to Judge Johnston's order to sever and deny appointment of counsel, this Court reviews those portions for clear error. *Grimes v. City and County of San Francisco*, 951 F.2d 236, 241 (9th Cir. 1991). This Court must defer to the magistrate's order unless it is clearly erroneous or contrary to law. *Id.*

II. DISCUSSION

Judge Johnston recommends that the Court deny class certification because *pro se* plaintiffs are generally prohibited from pursuing claims on behalf of others in a representative capacity. (Doc. 10 at 2.) In response, Archer highlights the rationale underlying the class action: efficient, simultaneous litigation of similar claims. (Doc. 14 at 3-5.)

Judge Johnston's recommendation to deny class certification does not concern the benefits of proceeding as a class action. Judge Johnston based his recommendation instead solely on the standing prohibition on *pro se* plaintiffs acting in a representative capacity. (Doc. 10 at 2.) Such prohibition has been

recognized by the Ninth Circuit. *Simon v. Hartford Life and Accident Ins. Co.*, 546 F.3d 661, 664 (9th Cir. 2008). The perceived benefits of proceeding as a class do not defeat the rule.

The Court has reviewed the remainder of Judge Johnston's Order and Findings and Recommendations for clear error. The Court finds no error, and adopts the Findings and Recommendations in full.

III. ORDER

Accordingly, **IT IS ORDERED** that Magistrate Judge Johnston's Findings and Recommendations (Doc. 10) is **ADOPTED IN FULL**. Plaintiffs' motion for class certification (Doc. 7) is **DENIED**.

DATED this 14th day of November, 2017.

A handwritten signature in cursive script, reading "Brian Morris". The signature is written in black ink and is positioned above a horizontal line.

Brian Morris
United States District Court Judge